

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning.

Rulemaking 04-04-003
(Filed April 1, 2004)

Order Instituting Rulemaking to Promote Consistency in Methodology and Input Assumptions in Commission Applications of Short-run and Long-run Avoided Costs, Including Pricing for Qualifying Facilities.

Rulemaking 04-04-025
(Filed April 22, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING
MODIFYING SCHEDULE FOR PHASE 2**

Summary

This ruling modifies the schedule for the filing of testimony and the joint evidentiary hearings in Rulemaking (R.) 04-04-003 and R.04-04-025 on policy and pricing of Qualifying Facilities¹ (QFs) in response to the Independent Energy Producers Associations' (IEP) Motion for an Extension of time within which to submit Opening Testimony. Concurrent opening testimony is now due on August 17, 2005, concurrent rebuttal testimony is due on September 7, 2005, and evidentiary hearings are scheduled for September 19 - October 7, 2005. In order

¹ Qualifying Facilities, or QFs, are qualifying non-utility cogeneration and small power producing facilities under the Public Utility Regulatory Policies Act (PURPA) of 1978 that sell electric power to a host utility at the host utility's avoided cost rate.

to maintain the revised schedule, Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas and Electric Company shall provide complete responses to all non-confidential data requests no later than June 17, 2005.

Background

On May 24, 2005, IEP filed a Motion for an extension of time to submit opening testimony in R.04-04-025 accompanied by a request that the time for responding to the Motion be shortened to five business days. IEP states that in light of the Administrative Law Judges' Ruling on Protective Order and Remaining Discovery Disputes dated May 9, 2005 (the May 9 Ruling), the time for submitting opening testimony should be extended by 105 days to provide IEP sufficient time to seek out and retain knowledgeable candidates to serve as IEP's Reviewing Representative and prepare testimony on IEP's behalf. IEP states that absent additional time to seek out and retain supplemental, qualified professionals that can sign the protective order, IEP will not be able to effectively present its position in this proceeding. IEP requests that the schedule for R.04-04-025 should be extended by 105 days from July 6, 2005 to October 19, 2005.

The May 9 Ruling resolved certain contested discovery disputes raised by the Cogeneration Association of California's and the Energy Producers and Users Coalition's (jointly, CAC/EPUC) Motion for Order Compelling Compliance with Federal Law and Production of Complete, Non-Redacted Responses to Data Requests dated December 9, 2004, IEP's Motion to Compel Responses to Data Requests dated January 4, 2005, and the California Cogeneration Council's (CCC) Motion to Compel Responses to Data Requests filed on March 4, 2005. The May 9 Ruling required non-confidential disclosure of

certain requested data and confidential disclosure of certain other requested data. The May 9 Ruling also adopted a protective order (Attachment A to the May 9 Ruling) governing the disclosure of confidential data. Under the adopted protective order, the requesting parties, referred to as “Market Participating Parties”² (“MPP”) or “MPP Reviewing Representatives”³ may have access to certain protected materials subject to the following restriction:

“Reviewing Representatives shall use Protected Materials solely for purposes of this proceeding. In addition, for a period of two (2) years from the date a Disclosing Party provides Protected Materials to a Reviewing Representative, such Reviewing Representative shall not engage, directly or indirectly, in (a) the purchase, sale, or marketing of electrical energy or capacity or natural gas (or the direct supervision of any employee(s) whose duties include such activities), (b) the bidding on or purchasing or [sic] power plans [sic] (or the direct supervision of any employee(s) whose duties include such activities), or (c) consulting with or advising others in connection with any activity set forth in subdivisions (a) or (b) above (or the direct supervision of any employee(s) whose duties include such activities or consulting), if such activities (as described in subparagraphs (a) through (c) are reasonably likely to affect California energy markets in more than a de minimis way.”⁴

² The term “Market Participating Party” (“MPP”) refers to a party that is: (i) a person or entity that engages in the purchase, sale or marketing of electrical energy or capacity or natural gas, or the bidding on or purchasing of power plants, or consulting on such matters; or (ii) a trade association or other organization composed of or representing persons or entities that engage in one or more of such activities.

³ MPP Reviewing Representative refers to an outside attorney or an outside expert retained by a MPP and selected pursuant to Paragraph 6 of the Protective Order for the purpose of preparing for, participating in, or giving advice concerning this proceeding.

⁴ May 9, 2005 Ruling at page A-7.

IEP reports that its current representatives are unable to sign the protective order because to do so would result in significant, deleterious impacts on their professions. IEP therefore requests an extension of time to submit opening testimony to seek out and retain additional representation from persons that are in a position to sign the protective order. IEP also notes that the protective order requires that reviewing representatives be identified to all parties and approved by the ALJ if necessary, prior to their receipt of the protected materials, and that additional time is necessary to complete these steps.

By ALJ ruling, the due date for responses to the Motion requested by IEP was shortened to June 6, 2005. PG&E, SCE, the CCC and CAC/EPUC filed timely responses to the Motion.

PG&E states that a change in the schedule will further delay the Commission's resolution of its Short-Run Avoided Cost (SRAC) pricing and a decision on new and expiring contracts for QFs. PG&E suggests that a reasonable extension in the schedule should be limited to one month, making the concurrent opening testimony due on Monday, August 8, 2005. PG&E also requests that the Commission rule now that any adjustments to the SRAC pricing formula determined in this proceeding shall be retroactive to at least January 1, 2004, but in no case later than June 1, 2005.

SCE suggests that rather than further delaying the entire proceeding to accommodate IEP's request, the Commission should reconsider SCE's proposal to conduct Phase 2 of R.04-04-025 in two sub-phases, in which Phase 2(a) would consist of: (1) the utilities' propose market based approaches to the SRAC methodology, (2) the QFs file responsive testimony, and (3) the Commission would then decide whether SRAC should be reformed, whether or not the Commission can reform SRAC in view of Section 390(b), and whether to adopt

the market-based approach. Depending on the outcome of Phase 2(a), the Commission could then proceed to Phase 2(b), in which it would consider QF proposals for SRAC reform based on production simulation modeling.

In SCE's opinion, consideration of whether to adopt a market based approach would depend almost entirely on evidence establishing the strength and availability of market proxies for avoided cost, an issue which SCE believes can be fully addressed on the merits without giving the QF parties access to SCE's materials covered by the protective order.

The CCC and CAC/EPUC support the extension for the reasons stated in the IEP Motion. In addition, CCC and CAC/EPUC note that the utilities have yet to provide the non-confidential data as directed in the May 9 Ruling. The CCC argues that the failure to disclose even the non-confidential data further justifies IEP's request for an extension in the date for filing opening testimony.

Discussion

IEP's request for an extension in the schedule is reasonable given the requirements of the protective order. However, the 105-day extension requested by IEP is excessive and would unduly delay the Commission's decision on QF policy and pricing issues. IEP has been on notice since May 9, 2005, of the requirements of the protective order, and presumably has been working to identify and retain a reviewing representative during that time; the extension should be reduced by at least 30 days. In addition, the amount of time required to notify the parties of the selected reviewing representative and obtain any approval necessary from the ALJ is unlikely to require the amount of time requested by IEP for this purpose.

In order to provide sufficient time for parties to identify and retain additional reviewing representatives to assist in the preparation of testimony in

this proceeding, the schedule for the filing of opening testimony will be extended until August 17, 2005. Assuming that IEP and any other parties interested in retaining additional personnel willing to sign the protective order have been diligently working to do so following the May 9 Ruling, this seven-week delay should provide sufficient time to allow the reviewing representatives to prepare testimony. Adherence to this schedule will require prompt receipt of both non-confidential and confidential data. Therefore, to the extent they have not already done so, the utilities shall provide complete responses to all non-confidential data by June 17, 2005, in accordance with the May 9 Ruling. The utilities shall advise the assigned ALJ, by letter, that they have done so.

SCE's request that the Commission should reconsider SCE's proposal to conduct Phase 2 of R.04-04-025 in two sub-phases, addressing the utilities' market-based pricing proposals first, is denied. Although SCE believes that the QFs' testimony in response to the utilities' market-based proposal would not require the data subject to the current discovery issues, this is by no means assured, and I am reluctant to limit the QFs' testimony in response to the utilities' market-based approach proposals to the non-confidential data. SCE's suggested sub-phased approach would likely result in further delay.

Schedule

The revised schedule for the filing of testimony and the joint evidentiary hearings in R.04-04-003 and R.04-04-025 on policy and pricing of QFs is as follows:

Event	Date
Joint Outline for Testimony and Briefs	August 3, 2005
Concurrent Opening Testimony	August 17, 2005
Concurrent Rebuttal Testimony	September 7, 2005
Evidentiary Hearings at the Commission's Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, CA 94102	September 19 – October 7, 2005, as necessary

A schedule for the filing of post-hearing opening and reply briefs will be determined by the close of the evidentiary hearings.

IT IS RULED that:

1. The schedule for concurrent opening and rebuttal testimony and evidentiary hearings on the Qualifying Facilities' policy and pricing issues is modified as set forth herein.
2. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas and Electric Company shall provide complete responses to all non-confidential data by June 17, 2005, in accordance with the May 9 Ruling, and shall advise the assigned administrative law judge, by letter, that they have done so.

Dated June 14, 2005, at San Francisco, California.

/s/ JULIE HALLIGAN by LTC

Julie Halligan
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties for whom an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Modifying Schedule for Phase 2 on all parties of record in this proceeding or their attorneys of record.

Dated June 14, 2005, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

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If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.